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Class. Changed to: TS S C	
Next Review Date:	
Auth: HR 70-3	
Date: JAN 1979	By: 015

13 January 1976

MEMORANDUM FOR: [REDACTED]

THROUGH: Assistant Director for Scientific Intelligence

SUBJECT: Copyright

REFERENCE: Memorandum for General Counsel, CIA, from [REDACTED] dated 28 December 1975

1. The laws of the United States pertaining to copyrights are embodied in Title 17 of the U. S. Code. Section 8 of that Title provides, inter alia, "No copyright shall subsist in the original work of . . . any publication of the United States Government." The case law is fairly clear that a book written entirely on Government time by a Government employee in the course of his duties is Government property and its publication, whether undertaken directly by the Government or through a private publisher, would be a Government publication. The cases also indicate (viz., Swayer vs. Crowell Pub. Co., 49 F. Supp. 471) that if the author should secure a copyright, he would hold this copyright in trust for the Government. Consequently, since the Government would be the true legal owner, the copyright would be invalid.

2. Conversation with the Register of Copyrights does, however, reveal that there has been no clear judicial interpretation of whether a book written partly on Government time and partly on the author's own time is necessarily a Government publication if the department of Government concerned chooses not to exercise any rights it may possess. The question of what percentage of time spent on the book was Government and what percentage was personal is genuine but not necessarily conclusive. It was suggested that the application for copyright filed by the author does not require any indication that the author is a Government employee or that part of the time he put on the book was Government time. Consequently, if the concerned department interposes no objection to the granting of copyright, the issue could be raised only in subsequent litigation where someone charged with infringement of the copyright might interpose as a defense that the book was actually a Government publication.

DD/s Subject

3. Since the respective legal and equitable rights of the author and of the Agency are undetermined and might be considered controversial, the completion of the attached agreements in order to settle the rights of the parties seems to provide sufficient consideration for the premises of each.

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